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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 JASON MERRYMAN,

8 Plaintiff,

9 v.

10 CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

11 Defendant.  
12

NO: 1:15-CV-3014-TOR

ORDER GRANTING MOTION TO  
ALTER JUDGMENT

13  
14 BEFORE THE COURT is Plaintiff's attorney D. James Tree's Motion to  
15 Alter Judgment (ECF No. 33). This matter was submitted for consideration  
16 without oral argument. The Court has reviewed the briefing and the record herein,  
17 and is fully informed.

18 Plaintiff requests the Court amend the Court's Order Granting in Part  
19 Plaintiff's Motion for Section 406(b) Attorney Fees (ECF No. 33). In the Order  
20 Granting Attorney Fees (ECF No. 33), the Court granted Mr. Tree's request for

1 attorney fees in part. Mr. Tree requested the Court approve his fee request of  
2 twenty five percent of the past due benefits received for Title XVI benefits  
3 pursuant to 42 U.S.C. 406(b). The Commissioner had no objection to the request.  
4 ECF No. 32. The Court found Mr. Tree was only entitled to twenty five percent of  
5 the past due benefits received for Title II benefits, as Section 406(b) mentions a  
6 judgment under subchapter II, but not subchapter XVI. As a result, the Court  
7 accordingly awarded a fee of \$2,581.51, instead of the requested amount of  
8 \$3,700.51.

9 Mr. Tree now requests the Court alter or amend the judgment pursuant to  
10 Federal Rule of Civil Procedure 59(e). ECF No. 34. Mr. Tree explains that the  
11 provisions regarding attorney fees found in Section 406 have been extended to SSI  
12 benefits under subchapter XVI pursuant to 42 U.S.C. § 1383(d). The Court agrees  
13 with Mr. Tree and finds the initial request of attorney fees in the amount of  
14 **\$3,700.51** is recoverable pursuant to the contingency fee agreement under 42  
15 U.S.C. §§ 406, 1383. The Court finds the fee reasonable for the reasons articulated  
16 in the previous Order (ECF No. 33).

17 Accordingly, the Court finds Mr. Tree is entitled to attorney fees in the  
18 amount of **\$3,700.51** pursuant to 42 U.S.C. §§ 406, 1383, and hereby amends its  
19 previous judgment (ECF No. 33) pursuant to Rule 59(e). *Allstate Ins. Co. v.*  
20 *Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (“In general, there are four basic

1 grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is  
2 necessary to correct manifest errors of law or fact upon which the judgment rests;  
3 (2) if such motion is necessary to present newly discovered or previously  
4 unavailable evidence; (3) if such motion is necessary to prevent manifest injustice;  
5 or (4) if the amendment is justified by an intervening change in controlling law.”).

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**


7 1. Plaintiff’s Motion to Alter Judgement (ECF No. 34) is **GRANTED**. The  
8 Commissioner is directed to pay attorney fees in the amount of  
9 **\$3,700.51**, to be deducted from Plaintiff’s award of past-due Social  
10 Security disability benefits. *See* ECF No. 30-1 at 3.

11 2. The award shall be made payable directly to Plaintiff’s counsel D. James  
12 Tree, and mailed to D. James Tree, 3711 Englewood Avenue, Yakima,  
13 WA 98902.

14 The District Court Executive is hereby directed to enter this Order and  
15 provide copies to counsel. The file shall remain **CLOSED**.

16 **DATED** October 9, 2018.



  
THOMAS O. RICE  
Chief United States District Judge